

THE CROCKER LAW FIRM, LLC

7710 CARONDELET AVE., SUITE 404 • CLAYTON, MISSOURI 63105

PRESS RELEASE - For Immediate Release
MARCH 20, 2023

INVESTIGATION OF IRON COUNTY OFFICIALS THWARTED BY CRIMINAL CHARGES AGAINST SHERIFF BURKETT

In February 2023, Iron County Sheriff Jeff Burkett received information about two Iron County elected officials who may have engaged in a pattern of conduct which, if substantiated, could result in ethical and criminal violations. These elected officials hold positions of significant weight and authority in Iron County.

Through unknown means, officials apparently discovered the investigation which was still in its infancy. A critical component of Sheriff Burkett's investigation would require a comprehensive review of CCTV footage from stationary cameras in and around the Iron County Courthouse.

Subsequently, Sheriff Burkett was told that Iron County Commissioners were demanding access to the camera system and camera footage in an effort to diminish his control of these files. Sheriff Burkett was immediately suspicious. It was clear that interested parties, potentially including those in his investigation, were attempting to remove cameras and video files under his lawful control.

Sheriff Burkett expressed concerns that their forcible attempt to gain access to these records was violative of his own department policies and Missouri statutes pertaining to public records requests. He also firmly believed that this was an attempt to snuff out the new investigation.

Sheriff Burkett received an email response from the Iron County Prosecuting Attorney, here serving in a dual role as the County Counselor, which stated, "the Iron County Commission will be sending someone to access the surveillance equipment and the recording equipment." The Iron County Prosecutor also provided a questionable legal opinion by advising Sheriff Burkett, "This is not a violation of the law." Again, Sheriff Burkett denied access to these records.

Sheriff Burkett notified the Iron County Commissioners of the conflict of interest the Prosecuting Attorney had in this matter and requested funding to obtain outside legal counsel.

On March 10, 2023, the Iron County Prosecutor filed a civil action against the Sheriff to further the Iron County Commission's interests in obtaining the concerned surveillance system and related video files. This court filing 23IR-CC00004 is mysteriously absent from Missouri CaseNet, concealing the action from public view.

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The attempt to gain control of these records conveniently corresponded with a new criminal investigation by the Missouri State Highway Patrol. This investigation led to the recent criminal charges, the likes of which even seasoned law enforcement professionals and attorneys have never seen.

Now, a political ally of the Iron County Commissioners and Prosecuting Attorney is in charge of the Sheriff's Office. This same individual, along with the Iron County Prosecutor, were instrumental in the 2022 effort (22IR-CC0003) to take control of the Sheriff's Office while Sheriff Burkett was hospitalized with a severe Covid-19 infection.

Additional information will be provided in the coming days and weeks.

Media Inquiries: Gabe@crockerlawstl.com

PRESS RELEASE - MARCH 20, 2023

Attachment - Table of Contents

Attachments #1 & #2:

Email communications regarding access to records and tampering with equipment from Sheriff Burkett.

Prosecutor's response to Sheriff's denial of access to surveillance equipment and files.

Attachment #3:

Civil action filed against Sheriff Burkett file on March 10, 2023. As of 3/19/23, this action has not been entered into the Missouri Court's filing system. Case # 23IR-CC00004

Included with Attachment #3: Sheriff Burkett request for outside legal counsel.

Attachments #4 & #5:

Civil action to remove Sheriff Burkett from office.

Undated correspondence from Prosecuting Attorney to Iron County staff members.

Attachment #6:

Relevant Iron County policies and procedures pertaining to records management.

Attachment #7:

Missouri Supreme Court Rules of Professional Conduct - Rule 4-1.7: Conflicts of Interest: Current Clients.

ATTACHMENTS
#1 AND #2

From: jscaggs@ironcountymo.gov <jscaggs@ironcountymo.gov>
Sent: Saturday, February 25, 2023 11:48 AM
To: Iron County Prosecuting Attorney <ironcomopa@prosecutors.mo.gov>
Subject: Email

Got this email below.

Greetings All,

Sheriff Burkett has advised me to email everyone the following message;

As the Elected Sheriff of Iron County. I will stand to protect the safety of all citizens in this county. The Sheriff Department will maintain the safety and security of all government buildings and the individuals who work and do business in these buildings inside the County of Iron. This means the Iron County Courthouse. If anyone touches the cameras they will be charged with Tampering with government property.

Per Sheriff Jeff Burkett

Confidentiality Notice: This message may contain legally privileged and/or confidential information and is intended only for the addressee(s). No addressee should forward, print, copy, or otherwise reproduce this message in any manner that would allow it to be viewed by any individual other than the addressee(s). If the reader of this message is not the intended recipient, you are hereby notified that any unauthorized disclosure, dissemination, distribution, copying or the taking of any action in reliance on the information herein is strictly prohibited. If you have received this communication in error, please immediately notify the sender and delete this message.

From: Iron County Prosecuting Attorney <ironcomopa@prosecutors.mo.gov>
Sent: Tuesday, March 07, 2023 8:29 AM
To: Jeff Burkett; Macie Yount; Chase Bresnahan; Matthew Cozad;
robert.sanzotera@ironcountymo.gov; shawn.herbert@ironcountymo.gov;
willie.francis@ironcountymo.gov; Christopher.Jayne@ironcountymo.gov; Ben Moody;
Benjamin Moody; Bill.declue@ironcountymo.gov; Beth Ethridge; Susan Swiney; Brett
Barton
Cc: Jim Scaggs
Subject: County surveillance equipment

Sheriff Burkett and staff,

I am in receipt of the below email sent, I believe, from Chief Deputy Bresnahan on behalf of and at the request of the Sheriff. Please note that the County Commission will be sending someone to access the surveillance equipment and the recording equipment in the Sheriff's Department and in the Courthouse. This is not a violation of law. I will not file any charges referred to me regarding such individuals acting on behalf of the Commission. Do not arrest, interfere with or threaten any individual sent by the County Commission.

Further, do not delete or modify any recordings or data from these systems.

If you have any questions, please contact my office.

Regards,

Brian

Iron County Prosecuting Attorney's Office
250 S. Main Street, Suite 7
Ironton, MO 63650
ph. 573.546.2333
f. 573.546.7499
ironcomopa@prosecutors.mo.gov

This communication is from the Iron County Missouri Prosecuting Attorney's Office. This electronic mail message contains CONFIDENTIAL information which is (a) ATTORNEY - CLIENT PRIVILEGED COMMUNICATION, WORK PRODUCT, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee(s) named herein. If you are not an Addressee, or the person responsible for delivering this to an Addressee, you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this electronic mail message in error, please reply to the sender and take the steps necessary to delete the message completely from your computer system. If you have received this communication in error, please call us immediately at (573) 546-2333. Also, please notify immediately via e-mail the sender that you have received the communication in error.

IF THIS E-MAIL MESSAGE CONTAINS ATTACHED FILES AND DOCUMENTS, PLEASE NOTE THE FOLLOWING INFORMATION:
These files and documents are legal documents that have been sent by the Iron County Missouri Prosecuting Attorney's Office. These files and documents should only be printed for further review or execution as instructed. Any alteration, modification, addition, deletion or other changes to these documents may result in changes to the legal effect of these documents and the rights and remedies of parties involved. ACCORDINGLY, YOU ARE ADVISED NOT TO CHANGE THE TEXT OR FORMAT OF ANY OF THE ATTACHED FILES AND DOCUMENTS.

ATTACHMENT
#3



IN THE 42ND JUDICIAL CIRCUIT, IRON COUNTY, MISSOURI

Judge or Division: SIDNEY T PEARSON III	Case Number: 23IR-CC00004
Plaintiff/Petitioner: STATE OF MO EX REL IRON COUNTY	Plaintiff's/Petitioner's Attorney/Address BRIAN PARKER 250 S MAIN STE 7 IRONTON MO 63650
Defendant/Respondent: JEFF BURKETT	Court Address: IRON COUNTY COURTHOUSE 250 S MAIN ST STE 220 IRONTON, MO 63650
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: JEFF BURKETT
Alias:
220 SOUTH SHEPHERD STREET
IRONTON, MO 63650

COURT SEAL OF IRON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 10 days from the 12th day of March 2023. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

MARCH 13, 2023 _____
Date Clerk

Further Information: _____

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above Summons by: (check one)

delivering a copy of the summons and petition to the defendant/respondent.

leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with _____ a person at least 18 years of age residing therein.

(for service on a corporation) delivering a copy of the summons and petition to: _____ (name) _____ (title).

other: _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
Subscribed and sworn to before me on _____ (date).

(Seal) My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary \$ _____

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

A copy of the summons and petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF IRON COUNTY, MISSOURI

STATE OF MISSOURI)
 ex rel. Iron County)
 Relator,)
 v.)
 JEFFERY BURKETT)
 Sheriff of Iron County, Missouri,)
 Respondent)

No. _____

PETITION FOR WRIT OF MANDAMUS

COMES NOW Relator Iron County, by and through Iron County Prosecuting Attorney Brian Parker, and for the Petition for Writ of Mandamus, states:

I. Statement of Facts

1. Iron County owns certain surveillance equipment, including Alibi Network Bullet Cameras located in various places in the Iron County Courthouse and an Alibi 8TB NVR-WLN1601P network video recorder, currently located inside the Iron County Sheriff's Department Office and Jail at 222 S. Shepherd Street, Ironton, MO 63650.

2. On or around February 16, 2023 the Commission was informed that in contradiction to its original request, the cameras which had been installed in the Iron County Courthouse allowed for audio recording in addition to video recording. Such cameras are monitored by and connected to additional equipment located at the Iron County Sheriff's Department Office and Jail. The County Commission discussed an intention to disconnect the audio or remove the cameras all together.

3. On or around February 25, 2023 Chief Deputy Chase Bresnahan sent an email to Presiding Commissioner Jim Scaggs stating that per Sheriff Jeff Burkett "the Sheriff Department will maintain the

safety and security of all government buildings...This means the Iron County Courthouse. If anyone touches the cameras they will be charged with Tampering with government property." A copy of said email is attached hereto as Exhibit A.

4. On March 3, 2023, the administrative assistant sent out a communication to all Iron County deputies and jail personnel that stated "Per Sheriff We are not talking with any of the city Officers and they will not be allowed in the building as well as State Troopers...NO EXCEPTIONS."

5. On March 7, 2023 at approximately 8:15 a.m. the Iron County Commission voted for "Williams Alarm to seize the camera equipment and recording devices for the courthouse or to download the courthouse information if it is on the same device as the jail". A copy of said motion as it was announced in open session was typed up by the County Clerk and such document is attached hereto as Exhibit B.

6. On March 7, 2023 at approximately 8:30 a.m. the Prosecuting Attorney of Iron County sent an email to Sheriff Jeff Burkett, copying the deputies and jail staff, responding to the email of February 25, stating that "the County Commission will be sending someone to access the surveillance equipment and the recording equipment in the Sheriff's Department and in the Courthouse. This is not a violation of law. I will not file any charges referred to me regarding such individuals acting on behalf of the Commission. Do not arrest, interfere with or threaten any individual sent by the County Commission." A copy of said email is attached hereto as Exhibit C.

7. On March 7, 2023, at approximately 10:30 a.m. a representative of the County Commission, particularly the vendor Williams Alarm previously used by the County for installation and maintenance of surveillance equipment, was sent by the County Commission to the Sheriff's Department Office and Jail with a copy of Exhibit B. He was met immediately inside the door of the Sheriff's Department Office and Jail by jail staff, and despite indicating to them the instructions he had from the

County Commission in Exhibit B was told he was not allowed to access anything without the Sheriff's permission. A copy of the vendor's statement is attached as Exhibit D.

II. Relief Sought

Relator seeks a writ mandating Respondent to give Relator or Relator's chosen representatives complete access to particular property of Relator currently used by the Iron County Sheriff's Department - particularly the surveillance equipment, including but not limited to any cameras, recording devices, digital storage devices, networking equipment or computers connected to or used with the surveillance equipment.

III. Statement of the Reasons Why the Writ Should Issue

1. Relator asserts that Respondent is denying Relator access to Relator's own property.
2. Allowing this action to stand would be in violation of the County Commission's legal right under Section 49.270 of the Revised Statutes of Missouri to control, manage or convey any property owned by the County. Additionally, not allowing a representative of the Commission to work on equipment attached to the jail is a violation of the County Commission's legal rights under Sections 49.310, 49.470, 49.510 of the Revised Statutes of Missouri.
3. Jeff Burkett, as a County Officer in possession of property of the County has a duty to allow the County Commission access, use and repossession of the County's property. He further has a duty to allow the County Commission to alter, remodel, maintain or equip the courthouse or jail as they determine, including maintaining the offices in the manner and at the time they direct.
4. Jeff Burkett has defaulted in that duty by instructing his subordinates to not allow the County Commission access to Iron County Sheriff's Department Office and Jail, and specifically the surveillance equipment contained therein. In addition, he has threatened the County Commission for taking action on their own property contained within the Courthouse building. Allowing this default to stand would

constitute an illegal conversion of property by Jeff Burkett of the property of Iron County.

5. Jeff Burkett has demonstrated by his actions that he is very likely to take action to thwart Iron County from taking possession of its property and could delete, scramble or encrypt the recordings created by the County-owned system unless restrained and prohibited from doing so during the pendency of this action.

WHEREFORE, Relator Iron County prays that this Court issue a Writ of Mandamus to Iron County Sheriff Jeff Burkett, to provide complete access to Relator or Relator's chosen representatives regarding particular property of Relator currently used by the Iron County Sheriff's Department - particularly the surveillance equipment, including but not limited to any cameras, recording devices, digital storage devices, networking equipment or computers connected to or used with the surveillance equipment; and for a Preliminary Writ ordering him to not delete, scramble, encrypt or otherwise modify or render the recordings unusable or inaccessible; and for such other relief and orders as to the court may appear proper. A sworn affidavit is attached as Exhibit E in support of this request for a Preliminary Writ.

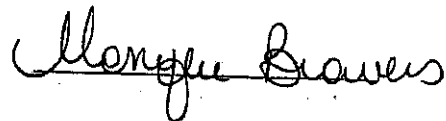
Respectfully submitted,

/s/ Brian Parker

Brian Parker, Mo. Bar #58335
Prosecuting Attorney
County of Iron
250 S. Main Street, Suite 7
Ironton, Missouri 63650
Attorney for Relator

Certificate of Service

This document was electronically filed this 10th day of March, 2023, pursuant to Supreme Court rule 103.08.



23IR-CC00004

Electronically Filed - Iron Circuit Division - March 10, 2023 - 10:07 AM

IN THE CIRCUIT COURT OF IRON COUNTY, MISSOURI

STATE OF MISSOURI)
ex rel. Iron County)
Relator,)

v.)

JEFFERY BURKETT)
Sheriff of Iron County, Missouri,)
Respondent)

No. _____

SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

COMES NOW Relator Iron County, by through Iron County Prosecuting Attorney Brian Parker, and respectfully states as follows:

I. Issue

The question at issue is whether the County Commission or the County Sheriff has control and authority over property the County purchased which is used by County employees and the County Sheriff. Statutory authority for control and authority over such property clearly rests with the County Commission.

II. Controlling Legal Authority

Section 49.270, RSMo, states that "The county commission shall have control and management of the property, real and personal, belonging to the county, and may purchase, lease or receive by donation, or to refuse donation of, any property, real or personal, for the use and benefit of the county, and may sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Section 49.310, RSMo, provides that the county commission shall have authority over all areas of the courthouse other than those governed by the Circuit Judges, and that the county commission may reconstruct, remodel, repair, maintain and equip the courthouse or jail as the county commission may determine. Further Section 49.470 provides that the county commission shall have the power to alter any county building.

III. Error Committed by Respondent

Respondent, through his subordinates working under his orders, has interfered with the County Commission's access to County property. Further, he has improperly threatened County Commissioners with further action outside of his authority if they exercise their rights to the County property.

IV. Writ is the Proper Remedy

The Circuit Court is the proper jurisdiction for a Writ of Mandamus. V.A.M.R. 94.03 A Writ of Mandamus compels performance of an act by one who is required to perform it by law, but has refused. State ex rel. Haley v. Goose, 873 S.W.2d 221 (Mo. 1994).

V. Conclusion

WHEREFORE, Relator prays that this Court issue a Writ of Mandamus to Jeff Burkett, Sheriff of Iron County, to provide complete access to Relator or Relator's chosen representatives regarding particular property of Relator currently used by the Iron County Sheriff's Department - particularly the surveillance equipment, including but not limited to any cameras, recording devices, digital storage devices, networking equipment or computers connected to or used with the surveillance equipment; and for a Preliminary Writ ordering him to not delete, scramble, encrypt or otherwise modify or render the recordings unusable or inaccessible; and for such other relief and orders as to the court may appear proper. An sworn affidavit is attached as Exhibit E to the Petition in support of this request for a Preliminary Writ.

Respectfully submitted,

/s/ Brian Parker

Brian Parker, Mo. Bar #58335
Prosecuting Attorney
County of Iron
250 S. Main Street, Suite 7
Ironton, Missouri 63650
Attorney for Relator

Certificate of Service

This document was electronically filed this 10th day of March, 2023, pursuant to Supreme Court rule 103.08.

Monique Beavers

IN THE CIRCUIT COURT OF IRON COUNTY, MISSOURI

FILED
MAR 12 2023
SAMMYE G WHITE
CIRCUIT CLERK
IRON CO MISSOURI

STATE OF MISSOURI)
rel. Iron County)
relator,)
v.)
JEFFREY BURKETT)
sheriff of Iron County, Missouri,)
Respondent)

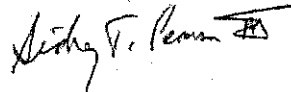
No. 23IR-CC00004

Preliminary Writ in Mandamus

Now on this 12th day of March, 2023, the Court, having considered Relator's Petition for a Writ of Mandamus, supporting Affidavit, and Exhibits, does find a basis for the issuance of a preliminary writ, and does hereby mandate, order and direct Respondent Jeffrey Burkett to preserve, in its current condition, the monitoring and recording equipment for the Iron County Courthouse surveillance system, as described in Relator's Petition herein, now in his custody at the Iron County Jail together with any data recorded from that system, and that Respondent shall not erase, delete, alter, encrypt or otherwise modify or impair such equipment or data pending further orders of this court.

It is further ordered that Respondent shall be allowed ten (10) days from the date of the entry of this Preliminary Writ to file any responsive pleadings to Relator's Petition herein.

SO ORDERED.



Sidney T Pearson III
Senior Judge
Sitting by Assignment



IRON COUNTY SHERIFF'S OFFICE

220 S. Shepherd Street
Ironton, Missouri 63650
(573)546-7051



Sheriff Jeff Burkett

To Iron County Commission

Jim Scaggs, Ben Young, Ron Chandler

This letter is being sent to you for request of outside legal counsel. As I stated in my last email to you, I, do not believe that it's appropriate for me to be seeking counsel from Mr. Parker considering his dual role. It is at my request that the Iron County Commission provide me funds of 5,000 to hire outside counsel for legal guidance in matters concerning the Iron County Sheriff's Office. As well as the most recent request of security footage from the courthouse. Thank you for your time on this matter.

Sincerely

Sheriff Jeff Burkett

ATTACHMENTS
#4 AND #5

IN THE CIRCUIT COURT OF IRON COUNTY, MISSOURI

Division ____

In re:

Jeff Burkett

)
)
)
)
)
)
)
)

Case No. _____

PETITION FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff County of Iron of the State of Missouri and for its Petition for Declaratory Judgment, states:

1. Plaintiff Iron County states that it is a fourth-class county duly organized under 46.096 of the Revised Statutes of Missouri.
2. Plaintiff states that Respondent Jeff Burkett is Sheriff for the County of Iron, State of Missouri.
3. Plaintiff states the position of sheriff of the County of Iron, State of Missouri, is an elective county office pursuant to Chapter 57, RSMo.
4. Plaintiff states that on or about November 3, 2020, Respondent was elected to the office of Sheriff of the County of Iron.
5. Plaintiff states that representatives of the Iron County Sheriff's Office sent out a press release on January 29, 2022 describing Sheriff Jeff Burkett as in critical medical condition due to COVID-19. Employees of the Iron County Sheriff's Office have also made representations to the Iron County Commission and to the Prosecuting Attorney between the dates of January 29, 2022 and February 4, 2022 that Sheriff Jeff Burkett has been on a ventilator for many days.
6. Plaintiff states that additional information was sent out from the Facebook account of Sheriff Jeff Burkett's wife describing Jeff Burkett as sedated, on a ventilator for multiple days, and on prescribed fentanyl.
7. Plaintiff states that the Prosecuting Attorney, in consultation with the Iron County Coroner, on February 4, 2022 notified

the employees of the Iron County Sheriff's Office that due to the vacancy in the Iron County Sheriff's Office, pursuant to Missouri statutes the Iron County Coroner would perform all duties of Sheriff for the remainder of Jeff Burkett's incompetency.

8. Plaintiff states that in response to the notification sent by the Prosecuting Attorney, an email was sent from Detective Chris Barton claiming that "If the current sheriff has not been removed from office, the coroner has no authority." A letter was later sent on Iron County Sheriff's Office letterhead stated that the notification would not be accepted and is void.

9. Plaintiff states that in addition to the information provided by third parties above, Sheriff Burkett has had no communication with the County Commission or the Prosecuting Attorney for the time period from January 15th, 2002 to the time of filing this petition.

10. Plaintiff alleges that through Jeff Burkett's disqualifying condition, he cannot currently fulfill the duties of office. As such, under Section 58.200 the office of Sheriff is at this time otherwise vacant and proper statutory authority lies with the Iron County Coroner. In the alternative, under Section 58.190 the Sheriff is disqualified from acting due to his unavailability and/or incapacity and the Iron County Coroner shall perform all duties of the Sheriff.

11. Plaintiff further states that a controversy presently exists between this Plaintiff and the Respondent herein as to whom Plaintiff can direct information and decisions normally reserved to the elected Sheriff, which said claim is in question as and to the extent hereinabove set forth; that the interests of Plaintiff and Respondent are in fact adverse; that the parties hereto have legally protectable interests involved, and that it is timely that judicial determination be made of the questions involved; that this court's declaratory judgment would terminate the uncertainties out of which these controversies have arisen; that Plaintiff has no adequate remedy at law, and that to grant declaratory and any other appropriate relief herein would avoid multiplicity of litigation.

Wherefore, Plaintiff prays that the court order, adjudge, decree, determine, and declare the respective status, rights, obligations, and legal relationships of all parties herein, and particularly to adjudge and declare that for the period of time that the Sheriff Jeff Burkett is hospitalized and unconscious he is unavailable and/or incapacitated and thus disqualified from acting as Iron County Sheriff, and for that period the Iron County Coroner is authorized to perform all the duties which are by law required to be performed by the Sheriff, and enjoin all actions and proceedings of every kind, both pending and which might be instituted, pertinent to any attempted defiance of the authority of the Iron County Coroner in that capacity, and to

award such further, general and supplemental relief as to which Plaintiff shall be entitled.

/s/ Brian Parker

Brian Parker
Mo. Bar #58335
Iron County Prosecuting Attorney
250 S. Main Street,
Ironton, MO 63650
Attorney for Plaintiff

OFFICE OF THE PROSECUTING ATTORNEY

IRON COUNTY, MISSOURI

250 SOUTH MAIN STREET

SUITE 7

IRONTON, MO 63650-0081

(573) 546-2333 TELEPHONE

(573) 546-7499 FACSIMILE

BRIAN PARKER, PROSECUTING ATTORNEY

MONIQUE BROWERS, STAFF ASSISTANT

SHANNON SMITH, STAFF ASSISTANT

LESA MASON, VICTIM ADVOCATE

To all employees of the Iron County Sheriff's Office:

As legal counsel for Iron County and all its officeholders, I am writing this note to clarify the chain of command under which each of you are operating in your respective jobs.

As the office of Iron County Sheriff stands vacant, under authority of Missouri statute, Tim Harbison, Coroner, is authorized to perform all duties of Sheriff for the remainder of Jeff Burkett's incompetency. We all hope and pray for Jeff's speedy recovery.

During this difficult time, give Tim every courtesy.

Thank you,



Brian Parker

Iron County Prosecuting Attorney

ATTACHMENT

#6



Iron County Sheriff's Office



Section : Records
Category : Records System
Subject : Records Management
Approved By: Sheriff Roger Medley

Policy 9.1.1
Effective Date : June 1, 2019

Records Management

Purpose

Records management involves processing, retention, transfer and disposal of agency records. Once information is recorded in any form, our agency is responsible for integrity of those records, including timely and accurate filing, retrieval and dissemination. It also must include control and security of all records. Employees of this agency, other agencies, and the general public must have appropriate access to collected data. However, there are legal requirements that limit such access.

The purpose of this procedure is to establish guidelines for the management of records.

Policy

Proper management of our records system will be maintained to preserve integrity of data collected and to facilitate appropriate use of all records. Records will be made inactive and stored or destroyed consistent with law and efficiency of operation.

Procedures

Records Management

This agency ensures efficient and effective records management through the following tasks and responsibilities

Records Review

Officers will ensure that reports are completed as specified by policy. Incomplete, inaccurate, or improperly completed reports shall be brought to the attention of the Supervisor.

Report Control

Officers must ensure that a record is made of each call-for-service. He/she is responsible for preparing copies and proper routing of reports. Officers must see that follow-up reports are completed and disseminated to proper distribution.

Records Maintenance

The Custodian of Records is responsible for maintaining all records in the central records unit, their proper storage, and security.



Iron County Sheriff's Office

Records Retrieval

The Custodian of Records is responsible for retrieval of records as necessary for police operation and public requests.

Hours of Operation

The central records unit is open to the public from 8:00a.m. to 4:00 p.m., Monday through Friday, except holidays.

Records Numbering System

All incidents and traffic citations, shall receive an assigned number through communications. Numbers shall be in sequential order beginning with the year and two digits for the month, and 0001 as the first number of the year (i.e., 16-01-0001) and each month. When accompanied by a report, traffic citations will have the report incident number assigned to it for reference purposes.

Records Systems

The system includes criminal, traffic and miscellaneous incident reports and files.

Report Status System

All original reports shall be stored in central records. Follow up status reports shall be received as specified by case management directives.

Records Retention System

The state records manual shall be the official guide for retention and destruction of records. The following guidelines shall be observed unless there is a special provision of the state records manual requiring special treatment.

- **Active** - Active means "on-line" and immediately available. The Master Name Index shall be kept perpetually active.
- **Inactive** - Inactive means "off-line," but still available in storage. All records, other than the Master Name Index, shall be kept "active" for five years before being moved to "inactive" storage. Criminal history records, once moved, shall be kept perpetually "inactive."
- **Disposal** - Disposal means permanent destruction from inactive status. All records, other than criminal histories, shall be destroyed after ten years, with specific approval of the Custodian of Records by state law. The Custodian of Records will determine:
 - Method of destruction;
 - Retention of records of historical value; and
 - Retention of records of offenses still within statute of limitations.



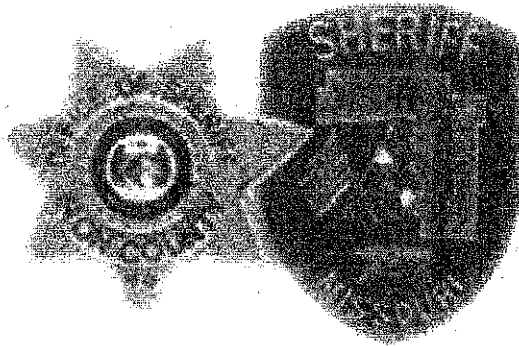
Iron County Sheriff's Office



- **State Law** - See Missouri state statutes for further information on retention and disposal of police records.

Central Records Unit

The Custodian of Records reports directly to the Sheriff.



Reference: CALEA Sections 82.1.1, 82.1.6



Iron County Sheriff's Office



Section : Records

Category : Records System

Subject : Release of Records

Approved By: Sheriff Roger Medley

Policy 9.1.2

Effective Date : June 1, 2019

Release of Records

Purpose

Our agency is held strictly accountable for release of criminal history record information (CHRI), non-criminal history record information (NCHI), and the internal privacy and security of records information.

The purpose of this procedure is to establish guidelines for the release of records.

Policy

This agency is committed to preventing unauthorized use of official records. Officers shall not release any record of this agency except as permitted by policy and the procedures detailed in this policy.

Procedures

Disclosure Of Records

The release of records is regulated by federal and state law, National Crime Information Center and state criminal information system regulations, and procedures herein. The Custodian of Records will ensure that records are released only as allowed.

Decisions on Release of Records

When in doubt about lawful or proper release of requested records, obtain clarification from the Sheriff.

Record Dissemination Log

When an officer makes records checks or releases copies of records to any person or agency outside the Iron County Sheriff's Office, he/she will record required information.

Hours of Availability

Non-criminal justice agency persons may make inquiries on records during normal business hours excluding weekends and holidays.

Release of Criminal History Record Information (CHRI)

Criminal history record information shall not be disseminated to any person or agency outside strict definition of criminal justice agency for the purpose of administration of criminal justice. This includes oral, printed or computer-to-computer communication.



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Criminal Justice Agencies

Open or closed criminal history records may be released to employees of criminal justice agencies for purposes of administration of criminal justice. The Iron County Sheriff's Office does not charge a fee for copies of records to employees of criminal justice agencies.

- When employees make a request in person, they must provide positive proof of their identification by agency ID card, badge, etc
- When requests are received by mail, the officer must make sure it is on official stationery of that agency and signed by proper authority.
- When requests are received by telephone, the caller shall be instructed to submit their request by mail on official letterhead.

Private Inquirers

News media, non-criminal justice government agency personnel, private investigators, private security personnel, and other private inquirers may inspect and make notes on any records that are open. If arrestee was charged but the case has not been adjudicated, inquirer shall be referred to the appropriate prosecutor.

- The Custodian of Records or designee shall redact all names of suspects, juveniles, and victims of sexual assault before review.
- No portion of juvenile reports or criminal histories shall be released except to employees of the Iron County Sheriff's Office. Refer all other inquiries to juvenile authorities.
- Investigative supplemental reports shall not be released without authorization of the Custodian of Records or designee.

Release of Non-criminal History Record Information (NCHRI)

Officers may not release information regarding juveniles. Names of deceased persons will not be released until the next-of-kin have been officially notified. The identity of criminal assault victims will not be released.

Field Reports

Generally, offense reports, traffic accident reports, and other miscellaneous reports may be released by review or copy to inquirers. If there was an arrest or citation, however, follow the procedures listed herein. The Custodian of Records or designee will redact names of victims and witnesses and suspect information prior to release.

Administrative Reports

Administrative reports shall not be released under any circumstances except by direct authorization of the Sheriff.

Purchase of Records

Requests for copies of reports and photographs will be received in person or by mail. When the request is in person, agency personnel will complete the Records Request Form and collect the fee before preparation of reports. Personnel shall immediately furnish a receipt to persons purchasing reports.

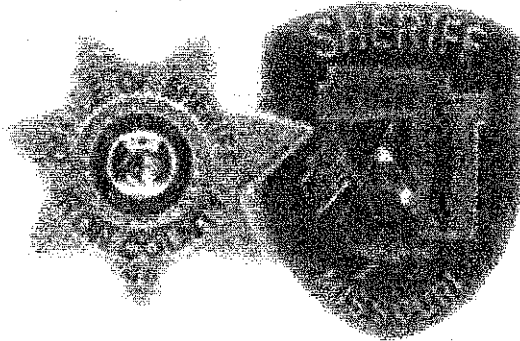
Internal Privacy and Security

Computer Printouts

Computer printouts of record information must be scrupulously guarded to prevent unauthorized disclosure. Original printouts shall not be copied and shall be destroyed by agency personnel when they are no longer needed.

Record Checks By Radio

Specific criminal history data on individuals, from either manual or computerized files, shall not be broadcast via voice radio. Information bearing on immediate safety of personnel (i.e., weapons, prior assaults on officers, etc.) may be broadcast.



Reference: CALEA Sections 82.1.1, 82.1.6



Iron County Sheriff's Office



Section : Records

Category : Records System

Subject : Sunshine Law

Policy 9.1.3

Approved By: Sheriff Roger Medley

Effective Date : June 1, 2019

Sunshine Law

Purpose

The purpose of this procedure is to establish guidelines for the dissemination of information in compliance with the Missouri Sunshine Law.

Policy

It is the policy of the Iron County Sheriff's Office to establish procedures complying with the Missouri Sunshine Law.

It is the policy of the Iron County Sheriff's Office to comply with the provisions of Chapter 610, RSMO, commonly referred to as the Sunshine Law. In furtherance of this policy, it is noted:

Section 610.023.1, RSMO provides that a public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records and the identity and location of the custodian is to be made available upon request, and


Section 610.026, RSMO provides that a public governmental body may prescribe reasonable fees for providing access to or furnishing copies of public records, and that those fees shall not exceed the actual cost of document search and duplication; and

Section 610.028.2 RSMO provides that a public governmental body shall provide a reasonable written policy in compliance with Sections 610.010 to 610.030, RSMO, commonly referred to as the Sunshine Law, regarding the release of information on any meeting, record, or vote.


Procedures

In accordance with the provisions of the Sunshine Law, the Iron County Sheriff's Office adopts the following:

1. That the Administrative Assistant to the Sheriff is appointed custodian of the records for the City of Iron County Sheriff's Office and that such Custodian is located at the Iron County Sheriff's Office, 1703 Iron County Rd, Ironton, MO 63650.
2. The Custodian shall make public records available for inspection and copying during regular business hours of the custodian at the Iron County Sheriff's Office building as provided by law. When another time or place is more convenient to the parties, the custodian may designate other employees to make alternative arrangements for the production of public records for inspection and/or copying.
3. The Custodian shall respond to all requests for access to or copies of a public record within the time period provided by the statute, except in those circumstances authorized by statute.
4. Fees which may be charged for access to or furnishing copies of Public records shall be as hereinafter provided, said fees having been Determined to comply with the provisions of Section 610.026, RSMO:



Iron County Sheriff's Office



- A. Fees for copies, or consultations that require special expertise, such as with attorneys, may include the actual rate of compensation for the professional who provides the services.
 - B. A fee not to exceed the average hourly rate of pay for activities performed by clerical staff including time required to locate, prepare, and copy responsive documents.
 - C. A fee of \$.10 per page for copies of a document.
 - D. A fee which includes the cost of copies, equipment use, programming, tapes, CD's and staff time required in the production of a public record maintained on computer, facilities, recording tapes or discs, videotapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices.
 - E. Documents may be furnished without charge or at a reduced charge when the Sheriff or his or her designee determines that waiver or reduction of the fee is in a public interest because it is likely to contribute significantly to public understanding of the operations or activities of Iron County Sheriff's Office and is not primarily in the commercial interest of the requester.
5. The above fees may be required to be paid in advance.
 6. All records retained by or of the Iron County Sheriff's Office, whether created internally or obtained from any such source whatsoever, are closed to the extent allowed by law.



Iron County Sheriff's Office

Section : Records
Category : Records System
Subject : Record Retention/Destruction **Policy 9.1.4**
Approved By: Sheriff Roger Medley **Effective Date :** June 1, 2019

Record Retention/Destruction

Purpose

The purpose of this procedure is to establish guidelines governing the Retention, Maintenance and Destruction of Records of the Iron County Sheriff's Office. This Records Retention Policy will only affect records that are retained in paper form. Electronic Records such as CODE 3, are not part of this policy unless approved by the Sheriff.

Definitions

Record: Any Document book, Paper, Photograph, Map, Audio, or Video recording, Police report, Investigative report, Supplemental Report, Casefile, Citations, Tickets, or Offense Report. This definition includes these records created, used, and maintained in electronic form.

Section 109.210 (5) RSMo.

Non-Records: Although records include a wide range of recorded information, not all recorded information is considered as a record. According to Section 109.210(5) RSMo, the following are not records, extra copies of documents preserved only for the convenience of reference, identical copies of documents, superseded manuals or directives, work papers, drafts of reports, blank forms, etc.

Retention Period: No records can be destroyed until they meet the minimum retention period authorized by the Sheriff.

Policy

It shall be the policy of the Iron County Sheriff's Office to retain, maintain, and destroy records as directed by law.

Procedures

Requirements for Retention

1. Police Report (also known as Event, Investigative Report, Supplemental Report, Short Form, Incident Reports). If a case is filed, retain until formal disposition.
 - (a.) Class A Felony: Permanent.
 - (b.) Other Felony: 3 years. Sex crime involving a minor, 30 years after victim reaches 18.
 - (c.) Misdemeanor: 1 year
 - (d.) Infraction: 6 Months
Disposition: Destroy after the retention dates have been reached.



Iron County Sheriff's Office



2. Non-Criminal (Also known as Lost or Found property, Alarm Calls, Civil Complaints, Injuries on City Property)
 - (a.) Any record pertaining to an injury on Iron County property will be retained until all Civil Actions have been resolved.
 - (b.) All other non-criminal records will have a minimum retention of 1 year.
Disposition: Destroy after the retention date has been reached.
3. Accident Report (Also known as LETS, STARS, MOTIS, Crash Reports)
 - (a.) Felony Cases, 7 years
 - (b.) All others, 5 years
Disposition: Destroy after the retention dates have been reached.
4. Missing Persons/Runaway
 - (a.) Person not found, retain permanent
 - (b.) Person located with no suspicious circumstances, 1 year
 - (c.) Person located, deceased, not suspicious, 1 year
 - (d.) Person located, deceased, suspicious, retain until resolved.
Disposition: Destroy after the retention dates have been reached.
5. Messages/Teletypes
 - (a.) 911 printouts/Mules messages, 13 months
 - (b.) Weather reports/Administrative messages/Training messages, may be retained for reference material, then destroyed.
Disposition: Destroy after the retention dates have been reached.
6. Arrest Records (Also known as Arrest log, Arrest Files, Arrest Register, Booking Sheet).
 - (a.) Retain for 5 years.
 - (b.) Fingerprints are often associated with Arrest Records. Fingerprints are normally sent to the Missouri State Highway Patrol Central Repository; if copies are kept locally they are merely reference and do not fall under this retention record.
7. Logs (Also known as Day Book, Supervisor Meeting Book)
 - (a.) Log books will be retained for a 5 year period.
Disposition: Destroy after the retention dates have been reached.
8. Audio Video Recordings (Also known as Watch Guard, In-Car Camera Surveillance recordings; or any other device or devices Used to record by Audio or Video)
 - (a.) Items under this section will be retained for a minimum of 60 days.
 - (b.) Audio/Video recordings used for criminal, DOR hearings, or internal Investigations will follow the same retention schedule for those investigations.



Iron County Sheriff's Office



9. Tip Line (Also known as Crime Line; Tips Hot Line; Intelligence Files)

- (a.) Information obtained from this source will be retained for 1 year.
Disposition: Destroy after the retention dates have been reached.

10. Special Investigation Fund

- (a.) Record of money expended in an investigation i.e. drug buys.
- (b.) Records may include balance sheets, sign in/sign out lists.
Disposition: Retain the same as the case file then destroy after audit.

11. Police Administrative Reports

- (a.) This includes UCR Reports, MIBRS Reports, Yearly Purge List.
Disposition: Destroy after 2 years.

12. Internal Affairs Records

- (a.) Complaint Report not sustained 1 year retention.
- (b.) Complaint Report sustained 5 year retention.
- (c.) Unfounded, Exonerated, Withdrawn Complaints destroy when Investigation is completed.
Disposition: Destroy after retention period has been met.

13. Destruction of Records

- (a.) When records are destroyed, it will be done in a secure manner. The Custodian of Records or designee will supervise the destruction of records. The Custodian of Records will maintain a log that identifies records that have been destroyed. A copy of this destruction log will be read into the record during City Council Meetings.

14. Racial Profile Records

- (a.) Retain for 1 year after submission to Attorney General.
Disposition: Destroy after retention dates have been reached.

15. Microfilm Records

- (a.) Some records are stored on microfilm. These records will follow the same retention schedule as records recorded on other media.

Reference: CALEA Sections 82.1.1, 82.1.6

ATTACHMENT

#7

Supreme Court Rules

		Section/Rule:	4- 1. 7
Subject:	Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct	Publication / Adopted Date:	August 19, 1994
Topic:	Client-Lawyer Relationship - Conflict of Interest: Current Clients	Revised / Effective Date:	July 1, 2007

RULE 4-1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in Rule 4-1.7(b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.(b)

Notwithstanding the existence of a concurrent conflict of interest under Rule 4-1.7(a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing. *(Adopted August 7, 1985, effective January 1, 1986. Amended March 1, 2007, effective July 1, 2007)*

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client, or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 4-1.8. For former client conflicts of interest, see Rule 4-1.9. For conflicts of interest involving prospective clients, see Rule 4-1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 4-1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule 4-1.7 requires the lawyer to:

- (1) clearly identify the client or clients;
- (2) determine whether a conflict of interest exists;
- (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and
- (4) if so, consult with the clients affected under Rule 4-1.7(a) and obtain their informed consent, confirmed in writing. The clients affected under Rule 4-1.7(a) include both of the clients referred to in Rule 4-1.7(a)(1) and the one or more clients whose representation might be materially limited under Rule 4-1.7(a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of Rule 4-1.7(b). To determine whether a conflict of

interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 4-5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule 4-1.7. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 4-1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of Rule 4-1.7(b). See Rule 4-1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 4-1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 4-1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 4-1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client; i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand,

simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and, thus, may not require consent of the respective clients.

[7] Directly adverse conflicts also can arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 4-1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor, or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the

opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 4-1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 4-1.10 (personal interest conflicts under Rule 4-1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling, or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 4-1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 4-1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 4-1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of Rule 4-1.7(b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in Rule 4-1.7(b), some conflicts are nonconsentable, meaning

that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under Rule 4-1.7(b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 4-1.1 (competence) and Rule 4-1.3 (diligence).

[16] Rule 4-1.7(b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Rule 4-1.7(b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of Rule 4-1.7(b)(3) requires examination of the context of the proceeding. Although Rule 4-1.7(b)(3) does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 4-1.0(m)), such representation may be precluded by Rule 4-1.7(b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 4-1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality, and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Rule 4-1.7(b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 4-1.0(b). See also Rule 4-1.0(n) ("writing" includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 4-1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client, and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of Rule 4-1.7(b). The effectiveness of such waivers is

generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under Rule 4-1.7(b).

Conflicts in Litigation

[23] Rule 4-1.7(b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by Rule 4-1.7(a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of Rule 4-1.7(b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is

substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved, and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying Rule 4-1.7(a)(1). Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under Rule 4-1.7(a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise, and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an

interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication, or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment, and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 4-1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited

circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 4-1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 4-1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 4-1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 4-1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board, and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of

interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.